IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2006

CORAM

THE HONOURABLE MR. JUSTICE R.REGUPATHI

Crl.O.P.No. 10326 of 2003 and
Crl.M.P.No.3545 of 2003

M.C.Charlee ... Petitioner.

Vs

State by Food Inspector, Zone 32,
Corporation of Chennai, Rippon Buildings,
Chennai-600 003 ... Respondent.

Prayer:- Criminal Original Petition filed under Section 482 of the Cr.P.C. to call for the records in NMMF No.3 of 2002 on the file of the learned XIX Metropolitan Magistrate, Madras.

For Petitioner : Mr.K.Ravi Anantha Padmanaban
For Respondent : Mr.P.Kumaresan,
Additional Public Prosecutor

O R D E R

The petitioner is an accused for an offence punishable under Section 7(i) and 16(1)(a)(i) r/w. Section 2(ia) and (m) of Prevention of Food Adulteration Act and the proceedings are pending in NMMF No.3 of 2002 on the file of the learned XIX Metropolitan Magistrate, Madras. The food in question is milk. Sample of milk has been taken from the petitioner and it was reported to be adulterated.

2. The learned counsel for the petitioner submits that as per Section 13 (2) of the Prevention of Food Adulteration Act, the petitioner has inherent right to send the second sample to the Central Food Laboratory for analysis, within a period of ten days from the date of receipt of the report of the Public Analyst. But, in the instant case, on 7.1.2000, the milk was taken for sample and on 27.1.2000 the report of the Public Analyst has been received. Under Section 13(2), notice should have been issued within a period of ten days for enabling the petitioner to send the second sample for analysis. In the meantime, the complaint was lodged on 3.4.2002 and notice was given on 16.5.2002. The learned counsel for the petitioner submits that a report has been received from the Central Food Laboratory to the effect that the sample is unfit for analysis. Under such circumstances, the valid right of the petitioner is

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defeated. The learned counsel relied on a case reported in 2005 (1) C.T.C. 645 (Suresh -VS- The State), which reads as follows:-

> "A reading of the above provision would make it explicit that the accused has got a valuable right to ask for sending the sample for analysis by the Central Food Laboratory. The purpose of the said provision was only to enable the accused to move the Court to get the sample kept by the local health authority, analysed by the Central Food Laboratory. The said provision clearly prescribes that on receipt of the report of the result of the analysis to the effect that the article of food is adulterated, the Local Health Authority should send a copy of the report of the result of the analysis within 10 days from the date of the receipt of the copy of the report. It also contemplates that the person accused of a charge of adulteration, shall be allowed 10 days time to make an application to get the sample sent to the Central Food Laboratory for analysis. Needless to say that the accused can make available of this right only after the institution of the prosecution. In a given case, if the prosecution starts at a time when that part of the sample, which has to be subjected to the analysis by the central Food Laboratory on the application of the accused, has become unfit for analysis, the valuable right cannot be availed by the accused."

He also relied on a judgment reported in 2002-1 L.W. (Crl.) 201 (M.Chinnasamy and others -VS- R.Satyanarayanan), wherein it has been held as follows:-

> "16. Thus, it is clear that the valuable right conferred on the accused persons to have the other portion of the sample analysed by the Central Food Laboratory is lost.
>
> 17. Moreover, Section 13(2) would provide that on receipt of the report of the result of public analyst, the Local Health Authority shall, after the institution of prosecution, forward the copy of the report of the public analyst tossed the vendor and other persons concerned and to inform such persons that they may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the other portion of the sample of article analysed by the Central Food Laboratory.
>
> 18. Similarly, Rule 9-A would envisage that the Local Health Authority shall after the institution of prosecution, within a period of ten days, forward a copy of the public analyst's report to the persons concerned."

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3. I have perused the materials available on record and heard the submission made by the learned Additional Public Prosecutor. The provisions enacted in the Special Enactment fixing certain time limits may have to be followed scrupulously. The cases, which are relied on by the counsel for the petitioner, are applicable to the facts on hand and circumstances of the present case.

4. In view of the above said reasons, the proceedings pending in NMMF No.3 of 2002 on the file of the learned XIX Metropolitan Magistrate, Madras, are quashed. The criminal original petition is ordered accordingly. Consequently, connected Crl.M.P. is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The learned XIX Metropolitan Magistrate, Madras.
2. Food Inspector, Zone 32,Corporation of Chennai,
   Rippon Buildings,Chennai-600 003
3. The Public Prosecutor, High Court, Madras.

1 cc To Mr.K.Favi Anantha Padmanabhan, Advocate, SR.54052.

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RVL 19.12.2006

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